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No. 85-930

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

ARTHUR CHAMBLESS and MILDRED H. CHAMBLESS,

Petitioners,

—against—

MASTERS, MATES & PILOTS PENSION PLAN, et al.

BRIEF IN OPPOSITION TO A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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MASTERS, MATES & PILOTS PENSION PLAN, et al.

BRIEF IN OPPOSITION TO A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Respondents M.M.&P. Pension Plan, Maher and M.M.&P. Pension Plan Trustees oppose the petition for a writ of certiorari to review the decision of the United States Court of Appeals for the Second Circuit issued in this case on August 28, 1985.

STATEMENT OF THE CASE

The M.M.&P. Pension Plan (the "Plan") is a multi-employer plan established to provide pension benefits to licensed deck officers who retire from sailing in the American Merchant Marine. It is jointly administered by an equal number of employer-designated and union-designated Trustees, as required by § 302(c)(5) of the Labor Management Relations Act of 1947, 29 U.S.C. § 186(c)(5), and in accordance with regulations adopted by the Trustees of the Plan (the "Plan Regula-

tions"). The funds used to provide benefits under the Plan are contributed solely by the participating employers. (Pet. App. A-3-A-4)[1]

Petitioner Arthur Chambless ("Chambless") sailed as a member of the International Organization of Masters, Mates & Pilots (the "IOMM&P" or "Union") from 1944 until 1977, as, at various times, a third mate, second mate, chief mate and master. In November 1976, Chambless applied for pension benefits, but shortly thereafter withdrew his application and continued employment aboard vessels covered by collective bargaining agreements with the IOMM&P ("IOMM&P-contracted vessels"). (Pet. App. A-6)

Chambless submitted a second application for pension benefits in early April 1977. Upon receipt of each of Chambless' applications, the Plan sent him a letter of acknowledgment notifying him of the Plan's requirement that he "retire" within the meaning of the Plan's definition of "retirement" and advising him to direct any questions concerning his retirement to the Plan Administrator. (*Id.*)

Chambless' Failure to Retire Within the Meaning of the Plan Regulations

In order to receive pension benefits, a participant must "retire" within the meaning of the Plan Regulations. When Chambless applied for pension benefits in April 1977, Article II-A, Section 15(a) of the Plan Regulations provided, in relevant part, that "[t]o be considered retired, a person must withdraw completely from any further employment, in any capacity, aboard any vessel whatsoever." (Pet. App. A-4)

The Plan has always required participants to "retire," to ensure that pension benefits are paid only to participants who

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1 References to pages in petitioner's appendix are designated as "Pet. App. ____." References to pages in the petition are designated as "Pet. ____." References to pages in the trial transcript are designated as "R. ____." References to plaintiffs' and defendants' trial exhibits are designated as "PX____" and "DX____," respectively.

have chosen to give up the sea as a career. The Plan is not intended to provide unemployment benefits or a second source of income for participants who continue to work aboard vessels. (R. 778, 796) Although the definition of retirement has been amended from time to time, it has always prohibited employment aboard vessels. (R. 936)

Participants in the Plan, over the years, have been kept informed of the Plan's retirement-defined provisions. For example, the Plan distributed booklets to participants in 1968 setting forth the definition of retirement. Moreover, participants who apply for pension benefits (including Chambless) are given specific notice of the definition of retirement in the Plan's acknowledgment of receipt of their application. (Pet. App. A-21; R. 922; PX-52; PX-57; DX-VV; DX-WW)

During the processing of Chambless' 1977 application, the Plan received information that he was working aboard a vessel and, therefore, had not retired within the meaning of the Plan Regulations. The Plan also learned that the vessel upon which Chambless had been working was operated by a company not contributing to the Plan. In response to the Plan's inquiry, Chambless confirmed this information. Thereafter, by letter dated January 26, 1978, Chambless was advised that: (1) the Trustees had denied his application for pension benefits because he had not retired within the meaning of the Plan Regulations; and (2) in accordance with Amendment 47 to the Plan Regulations, the payment of any benefits would be deferred until he reached "normal retirement age," defined by Article I, Section 13 of the Plan as age 65. (Pet. App. A-6–A-7)

Amendment 47, adopted in August 1976, provides that, if a participant works as a licensed deck officer on a U.S. flag ocean-going vessel operated by a company not contributing to the Plan, his benefits will not commence until normal retirement age. It reads, in pertinent part:

> In the event a Participant, subsequent to his accrual of credit for 10 years of vesting service and prior to his

> retirement, is employed in the capacity of a Licensed Deck officer on a U.S. flag ocean going vessel employed by a company which is not a participant in the M.M.&P. Pension Plan or the MM&P/PMA Pension Plan . . . , such Participant shall not be entitled to any pension benefits prior to his reaching his Normal Retirement Age, as defined in Article I, Section 13.

(Pet. App. A-5)

The Plan Regulations also provide that a pensioner is entitled to receive the higher of a flat-rate pension benefit, or a wage-related benefit based on the average of the pensioner's highest five years of "pay" (defined as salary earned in covered employment) during the ten years immediately preceding the effective date of his pension. Had Chambless actually retired in 1977, his wage-related benefit would have been $920 per month. Under Amendment 47, however, the effective date of Chambless' pension was postponed until he reached age 65. Assuming he did not engage in covered employment during that time, he would not have sufficient "pay" during the last ten years preceding the effective date of his pension to qualify for a wage-related benefit. The Plan therefore notified Chambless in 1980 that, upon retiring at age 65, he would receive the flat-rate benefit of $470 per month. (Pet. App. A-4, A-7)

Proceedings Below

Captain and Mrs. Chambless brought this action against the IOMM&P, the Plan, the Plan Trustees, the Plan Administrator, several former employers and two multi-employer bargaining associations. Plaintiffs alleged violations of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), as well as of federal labor and antitrust laws. They sought restitution of allegedly forfeited pension benefits, a clarification of pension rights and treble damages, as well as damages for emotional distress and punitive damages. (Pet. App. A-7–A-9) Plaintiffs did not, however, assert claims, now raised in their petition for a writ of certiorari, under either the

Age Discrimination in Employment Act of 1967 ("ADEA"), 29 U.S.C. § 621 et seq., or § 510 of ERISA, 29 U.S.C. § 1140.

The District Court granted in part defendants' motion for summary judgment, dismissing the claims that: (1) defendants violated the antitrust laws; (2) the deferral of Chambless' pension benefits violated § 203(a) of ERISA, 29 U.S.C. § 1053(a); (3) the Plan's 1975 adoption of age 65 as normal retirement age was a sham; (4) the Plan was estopped from deferring Chambless' benefits; (5) Chambless' pension application failed to receive adequate review; and (6) the Plan improperly withheld information from Chambless. All claims against the employers and the multiemployer bargaining associations were also dismissed. (Pet. App. A-9)

Summary judgment was denied as to the claim that Amendment 47 to the Plan Regulations was arbitrary and discriminatory. Summary judgment was also denied on Chambless' claim that the Plan failed to give him adequate notice of Amendment 47. (*Id.*)

In its decision after trial, the District Court found that the Plan had failed to advise Chambless fully of the effect that Amendment 47 would have on the calculation of his "wage-related" benefit upon retirement at normal retirement age, and that Amendment 47 was arbitrary and capricious as applied to Chambless because it caused a reduction of his monthly benefit from $920 to $470. The District Court also concluded that Amendment 47 had been enacted primarily to protect the IOMM&P, rather than the Plan, and was therefore arbitrary and capricious "in any event." (Pet. App. B-9) The deferral of Chambless' benefits until age 65 was declared a nullity and the Trustees were ordered to approve his application for a pension and to calculate the amount of his monthly pension benefit as if he had applied in 1977, provided he ceased working in the maritime industry and applied for a pension within six months of the date of judgment. (Pet. App. A-10–A-11; B-14–B-15)

Judgment was entered on October 30, 1984. (Pet. App. B-14–B-15) Plaintiffs' motion to modify the judgment was denied by endorsement order dated November 30, 1984. (Pet. App. C-1–C-2) Thereafter, the Plan defendants appealed from the October 30, 1984 judgment. Plaintiffs cross-appealed from the summary judgment decision, as well as the judgment after trial. On appeal, plaintiffs again failed to raise any claim under the ADEA or § 510 of ERISA.

In a decision dated August 28, 1985, the Court of Appeals affirmed the decision of the District Court in all respects. The court held, *inter alia*, that: (1) Amendment 47 does not violate § 203(a) of ERISA (Pet. App. A-16–A-17); (2) Chambless was not entitled to pension benefits retroactive to 1977 because he had never retired within the meaning of the Plan's definition of retirement (Pet. App. A-20–A-21); and (3) the District Court had not erred in dismissing Chambless' antitrust claim. (Pet. App. A-19–A-20) The Court of Appeals also held that it was reasonable for the District Court to give Chambless six more months from the date of its decision to retire in order to be eligible to receive the monthly benefit to which he would have been entitled had he retired in 1977. (Pet. App. A-21)

REASONS FOR DENYING THE WRIT

I. Review By This Court Of The Relief Granted After Trial Is Unwarranted

The bulk of the petition is devoted to an attack on the nature of the relief granted by the District Court after trial and upheld by the Court of Appeals. Because the relief granted is consistent with the resolution of the legal issues and raises no important questions under ERISA, review by this Court is unwarranted.

Chambless appears to argue that it was inconsistent for the courts below to find Amendment 47 unlawful but to refuse to award him pension benefits retroactive to 1977. That claim was

properly rejected below because, regardless of the effect of Amendment 47 on his right to receive benefits, Chambless has never "retired" within the meaning of the Plan Regulations. Rather, as the Court of Appeals noted, "Chambless has worked continuously in the maritime industry since May 1, 1977, and has not 'withdraw[n] completely from any . . . employment . . . aboard any vessel whatsoever,' " as would be required by Article II-A, Section 15(a), the Plan's definition of retirement. (Pet. App. A-20) Because the retirement-defined provision was properly upheld, Chambless is not entitled to retroactive benefits.

Contrary to Chambless' contention, the denial of retroactive benefits did not "effectively repudiat[e]" the decision that Amendment 47 is unlawful. (Pet. at 7) As the courts below recognized, the requirement that a participant "retire" in order to receive benefits is separate and distinct from Amendment 47. Because Chambless never alleged or proved that he had complied with the retirement-defined rule by withdrawing from work aboard a vessel, there is nothing anomalous about the fact that he was denied retroactive benefits.

Moreover, Chambless did not even challenge the Plan's retirement-defined rule as arbitrary. Even if such a contention were made, however, it would have had to be rejected, since rules for suspending benefits of individuals who are not retired have repeatedly been upheld as reasonable. *See, e.g., Geib* v. *New York State Teamsters Conference Pension and Retirement Fund*, 758 F.2d 973 (3d Cir. 1985); *Harm* v. *Bay Area Pipe Trades Pension Plan Trust Fund*, 701 F.2d 1301 (9th Cir. 1983); *Bayles* v. *Central States, Southeast & Southwest Areas Pension Fund*, 602 F.2d 97 (5th Cir. 1979); *Riley* v. *MEBA Pension Trust*, 570 F.2d 406 (2d Cir. 1977).

Chambless also contends that the deferral of his benefits constituted an unlawful "forfeiture" under § 203(a) of ERISA because he reached "normal retirement age" under the Plan before 1977. That argument was rejected by both the Court of Appeals and the District Court on the grounds that: (1) the

minimum vesting rules of § 203(a) do not require the payment of any benefits to a participant until he attains "normal retirement age"; and (2) the Plan's designation of age 65 as normal retirement age was valid. The courts below thus concluded that because Chambless had not reached age 65, the deferral of his benefits did not violate § 203(a).

This conclusion is consistent with the decisions of every other circuit that has considered the scope of § 203(a). *See McBarron* v. *S&T Industries, Inc.*, 771 F.2d 94 (6th Cir. 1985); *Geib* v. *Teamsters Fund, supra*, 758 F.2d 973; *Johnson* v. *Franco*, 727 F.2d 442 (5th Cir. 1984); *Harm* v. *Bay Area Pipe Trades Pension Plan, supra*, 701 F.2d 1301; *Janowski* v. *International Brotherhood of Teamsters Local 710 Pension Fund*, 673 F.2d 931 (7th Cir.), *cert. denied*, 459 U.S. 858 (1982), *vacated on other grds.*, 464 U.S. 1222 (1983); *Fine* v. *Semet*, 699 F.2d 1091 (11th Cir. 1983); *Sutton* v. *Weirton Steel Division of National Steel Corp.*, 724 F.2d 406 (4th Cir. 1983), *cert. denied*, ____ U.S. ____, 104 S. Ct. 2387 (1984). *See, also, Cator* v. *Herrgott & Wilson, Inc.*, 609 F. Supp. 12, 18 (N.D. Cal. 1984) (citing the District Court decision in this case); *Deak* v. *M.M.&P. Pension Plan*, No. 79-190, slip op. (M.D. Fla. June 4, 1984). Chambless' claim for retroactive benefits was thus correctly rejected on the basis of well-established ERISA principles and presents no question deserving review by this Court.

Nor is any important question raised by Chambless' request that the Court review the proviso in the District Court's judgment conditioning his future eligibility for certain benefits upon his retiring and filing for benefits within six months of the date of the court's decision. Contrary to his assertion that the relief ordered runs afoul of the ADEA, the remedy in no way involves a "forced retirement scheme." (Pet. at 15) In any event, neither the ADEA claim, nor Chambless' retaliation claim under § 510 of ERISA, was raised below and, therefore, should not be considered as a basis for granting certiorari. *Adickes* v. *S.H. Kress & Co.*, 398 U.S. 144, 147 n.2 (1970).

Chambless' real complaint is that inclusion of the six-month proviso was an abuse of the District Court's discretion. This argument, however, not only fails to raise any substantial question of federal law, but ignores the rationale for the six-month proviso. As the Court of Appeals explained, even if Amendment 47 is a nullity, both the Plan's definition of retirement and its provision for wage-related benefits remain intact. Under those provisions, the amount of a participant's wage-related benefit (assuming he is entitled to one) is normally calculated on the basis of his salary in covered employment during the ten-year period immediately before the effective date of his pension; if a participant does not retire, but works in non-covered employment during that period, not only is his "retirement" date postponed, but the amount of his wage-related benefit is reduced as well. (Pet. App. A-21)

The District Court decision, however, required the Plan to calculate Chambless' future benefits as if he had retired in 1977, "i.e., based upon his last years of higher paying covered employment, and not upon the ten year period immediately prior to his retirement." (*Id.*) Such relief, standing alone, would have accorded Chambless an unfair advantage over other participants by allowing him to continue to work indefinitely aboard vessels in uncovered employment, without any impact on his wage-related benefit. For this reason, the Court of Appeals concluded, it was reasonable for the District Court to condition this advantage on Chambless' retiring within six months of the date of its decision.

This Court has repeatedly held that federal courts have broad discretion to fashion appropriate equitable remedies. " 'The essence of equity jurisdiction has been the power of the Chancellor to do equity and to mould each decree to the necessities of the particular case. Flexibility rather than rigidity has distinguished it.' " *Weinberger* v. *Romero-Barcelo*, 456 U.S. 305, 312 (1982), *citing Hecht Co.* v. *Bowles*, 321 U.S. 321, 329 (1944). Such discretion extends to the formulation of remedies under ERISA. *See, e.g., Delgrosso* v. *Spang and Co.*,

769 F.2d 928, 937 (3d Cir. 1985); *Corley* v. *Hecht Co.*, 530 F. Supp. 1155, 1164 (D.D.C. 1982). Where, as here, the District Court exercised its discretion in a reasonable manner, the relief ordered was affirmed by the Court of Appeals, and no important legal question is presented, review by this Court is unwarranted.

II. The Court Of Appeals Did Not Decide That ERISA Implicitly Repealed Antitrust Remedies

In seeking to obtain review of the dismissal of his antitrust claim, Chambless misconstrues the decisions below. Contrary to his suggestion, those decisions in no way suggest that ERISA "was intended to repeal by implication available antitrust remedies." (Pet. at 11) Rather, the District Court concluded, and the Court of Appeals agreed, that Chambless simply had not suffered antitrust injury within the meaning of this Court's decision in *Brunswick Corp.* v. *Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477 (1977). Because neither of the decisions below was grounded on the "eliminat[ion of] antitrust remedies" (Pet. at 10), that question is not presented for the Court's consideration.

Nor does the Court of Appeals' decision raise any other question under federal law warranting this Court's review. Because of the complicated and unique circumstances of this case, a decision by the Court on the merits of Chambless' purported antitrust claim would not serve as a useful precedent in future cases.

The decisions below are, in any event, correct. In *Brunswick Corp.*, *supra*, the Court held that even where there has been a violation of the antitrust laws, an award of treble damages is proper only for an "antitrust injury":

> We . . . hold that for plaintiffs to recover treble damages on account of § 7 violations, they must prove more than injury causally linked to an illegal presence in the market. Plaintiffs must prove *antitrust* injury, which is to say

> injury of the type the antitrust laws were intended to prevent and that *flows from that which makes defendants' acts unlawful.*

429 U.S. at 489 (latter emphasis added).

Chambless' antitrust claim is apparently based on his allegation that the deferral of his pension benefits until normal retirement age created "a hindrance and interference with the ability of licensed deck officers to market their skill[s]." (Pet. App. A-19) As the Court of Appeals held, however, "[t]o the extent that Chambless' antitrust claim is based on a limiting of employment opportunities, he can claim no direct injury in light of his successful continued employment on non-MM&P vessels." (*Id.*)

Nor is Chambless' loss of pension benefits an injury that "flows from that which makes defendants' acts unlawful." *Brunswick*, *supra*, 429 U.S. at 489. The conduct alleged to violate the antitrust laws is the Plan's adoption of Amendment 47. As discussed above, however, the reason for Chambless' loss of pension benefits is not Amendment 47, but the fact that he did not qualify under the Plan's valid definition of retirement. Because that definition applies equally to covered and non-covered employment in the maritime industry, it raises no question under the antitrust laws. As the Court of Appeals recognized, the legality of the deferral of Chambless' benefits is "essentially an ERISA matter." (Pet. App. A-20)

The decision in *Blue Shield of Virginia* v. *McCready*, 457 U.S. 465 (1982), is inapposite. That case involved an entirely different factual context, in which the numerous ERISA questions confronting the courts below in this case were not present. The *Blue Shield* decision simply has no bearing on whether a pension plan participant in Chambless' position can recover treble damages under the antitrust laws.

Unlike the case presented in *Blue Shield*, moreover, Chambless' theory of damages is "speculative, abstract [and] impractical." *Id.* at 475 n.11. Not only does Chambless' claim—that

he would have retired but for Amendment 47—fail to raise any legal question for the Court to decide, but, given the fact that he twice returned to maritime employment after applying for retirement benefits (before he claims even to have known of Amendment 47), there is simply no way to determine when and whether Chambless would ever have retired and, therefore, no way to do any more than speculate as to the amount of pension benefits (if any) that he would have lost "by reason of" Amendment 47. *See Associated General Contractors of California, Inc.* v. *California State Council of Carpenters*, 459 U.S. 519, 543 (1983).

In dismissing Chambless' antitrust claim, the District Court noted:

> In his efforts to find a legal theory about which relief for his client's grievance could be granted, Chambless' counsel adopted the blunderbuss or fishing expedition approach—putting every colorable theory into his complaint. "[P]laintiff has attempted to assert an antitrust claim when [his] true grievance is grounded in" ERISA and duty of fair representation law.

(Pet. App. D-35, citation omitted) That observation is equally applicable to Chambless' petition for certiorari. Under such circumstances, review of the antitrust question claimed to be presented should be denied.

CONCLUSION

For these reasons, the petition for a writ of certiorari should be denied.

Dated: New York, New York
December 24, 1985

Respectfully submitted,

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